

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:)	
)	
Exide/General Battery Corporation	)	ADMINISTRATIVE ORDER ON
Nolan St & Spring Valley Road	)	CONSENT
Laureldale, Pennsylvania 19605)	
EPA I.D. No PAD 990 753 089)	
)	
	)	U.S. EPA Docket Number:
	)	RCRA-III-3-2000-002TH
)	
)	
)	
RESPONDENTS)	
)	
	)	Proceeding under Section
	)	7003 of the Resource
	)	Conservation and Recovery
	)	Act, as amended, 42 U.S.C.
	)	§ 6973.

ADMINISTRATIVE ORDER ON CONSENT

ADMINISTRATIVE ORDER ON CONSENT

TABLE OF CONTENTS

I.	Jurisdiction	2
II.	Parties Bound	2
III.	Statement of Purpose	3
IV.	EPA's Findings of Fact.....	3
V.	EPA's Conclusions of Law and Determinations	7
VI.	Work to be Performed	8
VII.	Quality Assurance	13
VIII.	Public Review of Administrative Record	14
IX.	Public Comment and Related Subsequent Modifications.	14
X.	Site Access	15
XI.	Sampling and Data/Document Availability	16
XII.	Record Preservation	16
XIII.	Project Coordinators	17
XIV.	Notification	17
XV.	Delay in Performance/Stipulated Penalties	19
XVI.	Dispute Resolution	21
XVII.	<u>Force Majeure</u> and Excusable Delay	23
XVIII.	Reservation of Rights	23
XIX.	Other Claims	24
XX.	Other Applicable Laws	25

TABLE OF CONTENTS
(continued)

XXI.	Indemnification of the United States Government	25
XXII.	Notice of Non-Liability of EPA	25
XXIII.	Subsequent Modification	25
XXIV.	Severability	26
XXV.	Termination and Satisfaction	26
XXVI.	Attorneys' Fees	27
XXVII.	Effective Date	27

ATTACHMENTS

- A. Consent Order and Agreement, Exide Corporation and Commonwealth of Pennsylvania, Department of Environmental Protection.
- B. List of EPA identified Interim Measure Properties.
- C. EPA's Integrated Exposure Uptake Biokinetic Model for Lead in Children (IEUBK Model).
- D. EPA's Recommendation of the Technical Review Workgroup for Lead for an Interim Approach to Assessing Risks Associated with Adult Exposures to Lead in Soil (Adult Lead Model).
- E. Scope of Work for a Health and Safety Plan
- F. Location of Site
- G. Index to the Administrative Record

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:)	
)	
Exide/General Battery Corporation	)	ADMINISTRATIVE ORDER ON
	)	CONSENT
Nolan Street and Spring Valley Road))	
Laureldale, Pennsylvania 19605	)	U.S. EPA Docket Number:
)	
	)	RCRA-III-3-2000-002TH
)	
RESPONDENTS)	
)	
	)	Proceeding under Section
	)	7003 of the Resource
	)	Conservation and Recovery
	)	Act, as amended, 42 U.S.C.
	)	§ 6973.

ADMINISTRATIVE ORDER ON CONSENT

The parties to this Administrative Order on Consent ("Consent Order" or "Order"), the United States Environmental Protection Agency ("EPA") and Exide/General Battery Corporation (hereafter "Respondents" or "Exide/GBC"), having agreed to entry of this Consent Order, it is therefore ordered and agreed that:

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the Administrator of EPA by Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. Section 6973. The

authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation No. 8-22-C dated March 20, 1985.

On January 30, 1986, EPA granted the Commonwealth of Pennsylvania (the "Commonwealth") authorization to operate a state hazardous waste program in lieu of the federal program pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). The Commonwealth, however, does not have authority to enforce Section 7003 of RCRA. The Commonwealth has been given notice of the issuance of this Consent Order pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

This Consent Order is issued to Respondents, the owners and/or operators of a facility located on Nolan Street and Spring Valley Road, Laureldale, Pennsylvania, hereafter referred to as the "Facility" as defined further in Section IV.B below. Exide/GBC agree to comply with this Consent Order and agree not to contest EPA's jurisdiction to issue this Consent Order and to enforce its terms. Further, Respondents will not contest EPA's jurisdiction to: compel compliance with this Consent Order in any subsequent enforcement proceeding, either administrative or judicial; require Respondents' compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order.

II. PARTIES BOUND

- A. This Consent Order shall apply to and be binding upon EPA, Respondents and their agents, successors and assigns.
- B. No change in ownership of any property covered by this Consent Order, or in corporate or partnership status of Respondents, shall in any way alter, diminish, or otherwise affect Respondents' obligations and responsibilities under this Consent Order.
- C. Respondents shall provide a copy of this Consent Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order and shall do so within seven (7) calendar days of the effective date of this Consent Order or date of such retention, whichever is later. All contracts, agreements or other arrangements with such persons shall require such persons to conduct or monitor the work in accordance with the requirements of this Consent Order. Notwithstanding the terms of any such contract, agreement or arrangement, Respondents are responsible for complying with this Consent

Order and for ensuring that all such persons perform such work in accordance with this Consent Order.

- D. In the event of any change in ownership or operation of the Facility as defined in Section IV.B, below, or in the event of any change in majority ownership or control of Exide/GBC, Exide/GBC shall notify EPA in writing of the nature of any such change no later than fifteen (15) calendar days after the effective date of such change. In addition, Exide/GBC shall provide a copy of this Consent Order to any successor to Exide/GBC and/or to the Facility as defined in Section IV.B, below, at least fifteen (15) calendar days prior to the effective date of such change. Nothing stated in this paragraph II.D shall relieve Exide/GBC from complying with the terms and conditions of this Consent Order in the time and manner specified herein.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are to develop and implement plans to assure that properties at or exceeding the cleanup levels determined under this Consent Order receive proper remediation to achieve levels that assure protection of human health and the environment.

IV. EPA'S FINDINGS OF FACT

Respondents neither admit nor deny EPA's Findings of Fact set forth herein in this Section IV.

- A. Exide/GBC are corporations doing business in the Commonwealth of Pennsylvania and each is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15).
- B. Exide/GBC own and/or operate a facility located at Spring Valley Road and Nolan Street in Laureldale, Berks County, Pennsylvania ("the Facility"), depicted in Attachment F hereto. The Exide/GBC Facility recycles used lead-acid batteries and battery parts, operates a secondary lead smelter, and manufactures lead batteries at this location. The manufacturing process includes the storage of used batteries and battery parts prior to reclamation, the

generation of spent battery acid, and the generation of secondary scrubber sludge from the emission control device for the secondary lead smelter. A wastewater treatment plant is also operated as part of this Facility. The Exide/GBC Facility treats waste water generated at the Facility and accepts hazardous waste (wastewater and sludge) for treatment from off-site facilities.

- C. Exide purchased the shares of GBC in May 1987 and conducts its business operations at the Facility by arrangement with GBC.
- D. On August 18, 1980, GBC submitted to EPA a Notification of Hazardous Waste Activity ("Notification") pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for the Facility. The Notification indicated that hazardous waste bearing the EPA hazardous waste codes of K069 and D002 and other non-specified toxic hazardous waste were generated, treated/stored/disposed at, transported to and from the Facility. EPA assigned the GBC facility EPA Identification Number PAD990753089.
- E. On November 19, 1980, GBC submitted to EPA a Part A Hazardous Waste Permit Application ("Part A Application") for the storage and treatment of hazardous waste in tanks and the storage of hazardous waste in a waste pile. The Part A Application indicated that hazardous waste bearing the EPA hazardous waste codes K069, D002, and D008 were stored and treated at the Facility.
- F. On December 31, 1980, EPA sent a letter acknowledging that the Facility qualified for interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
- G. On November 4, 1988, the Pennsylvania Department of Environmental Resources, currently known as the Pennsylvania Department of Environmental Protection ("PADEP"), issued a Part B Permit to Exide/GBC for Hazardous Waste Storage, Treatment, and Disposal at the Facility. This permit was effective until November 4, 1998 and sets forth operating standards and conditions for container storage, tank treatment, and waste pile storage units. On August 1, 1994, Exide/GBC submitted to PADEP an application for a recycling permit. As of the signing of this order the application is under review.
- H. On November 7, 1988, EPA issued a corrective action permit to Exide/GBC pursuant to Section 3004(u) of RCRA, 42 U.S.C.

6924(u). This permit was effective until November 7, 1998 and required the Exide/GBC to conduct corrective action for all releases of hazardous waste and hazardous waste constituents from solid waste management units, demonstrate financial assurance for the Facility, and minimize the generation of hazardous waste at the Facility. On April 3, 1995, Exide/GBC submitted to EPA an application for renewal of the corrective action permit. On September 9, 1999, EPA acknowledged that the corrective action requirements of the 1988 Corrective Action Permit remain in effect.

- I. On August 21, 1992, Exide/GBC submitted to PADEP a report containing results of an investigation it had conducted of soils from residential properties along the southeast and southwest corners of the Facility. This investigation would be later considered the Phase I Soil Sampling. The mean lead concentration found in the soil horizon of 0-3 inches was 2,287 milligrams per kilogram ("mg/kg"), and the total lead concentration found in samples taken from these residential properties ranged from 600 to 4,600 mg/kg. The mean soil lead concentrations in the 3-10 inches horizon and 10-18 inches horizon were 1,048 and 618 mg/kg, respectively, with lead concentrations in the 3-10 inches horizon ranging from non-detect to 2,100 mg/kg, and in the 10-18 inches horizon from 240 to 860 mg/kg.
- J. On July 2, 1993, Exide/GBC submitted a report to PADEP containing results of soil sampling from 13 additional properties of Muhlenburg Township and Laureldale Borough. This sampling was done at the request of the property owners following the completion of the Phase I Soil Sampling. The mean lead concentration for the 0-3 inches soil horizon was 421 mg/kg. The total lead concentrations ranged from 77 mg/kg to 1,200 mg/kg. The mean lead concentration for the 3-10 inches soil horizon was 311 mg/kg, with the total lead concentrations ranging from 32 mg/kg to 840 mg/kg.
- K. On November 10, 1998, Exide/GBC prepared a Risk Assessment Study, entitled Human Health Risk Assessment for Areas In the Vicinity of the Exide Facility, that summarized sampling results by risk assessment areas (referred to herein as the "Areas of Study"). According to this study, the risk assessment areas are discrete areas that reflect the land use associated with each area. The risk assessment areas and associated lead concentrations are listed in Table 1 immediately below:

Table 1 - Risk Assessment Areas

1. residential area southwest of the Exide Facility-- average lead concentrations of 1386 mg/kg (risk assessment area #1)
 2. residential area southeast of the Exide Facility-- average lead concentrations of 1908 mg/kg (risk assessment area #2)
 3. industrial/commercial area south of the Exide Facility -- average lead concentration of 779 mg/kg (risk assessment area #3)
 4. Bernhart Park (recreational area) --average lead concentrations of 525 mg/kg (risk assessment area #4)
 5. Lucent Technologies, Inc. Hillside -- average lead concentration of 3,386 mg/kg (risk assessment area #5)
 6. residential area south of Bernhart Park --average lead concentrations of 1054 mg/kg (risk assessment area #6)
 7. residential area north and east of the Exide Facility-- average lead concentrations of 695 mg/kg (risk assessment area # 7)
 8. St. Michael's Seminary property (residential)--average lead concentrations of 2565 mg/kg (risk assessment area #8)
 9. residential/commercial area west of St. Michael's Seminary property, average lead concentration of 414 mg/kg (risk assessment area #9).
- L. In adults, lead exposure may decrease reaction time, possibly affect the memory, and cause weakness in fingers, wrists, or ankles. Lead may cause anemia, lassitude, insomnia, facial pallor, weight loss, anorexia, malnutrition, vomiting, gingival lead line, tremors, encephalopathy, nephropathy, hypotension, and damage to the male reproductive system. It may also increase blood pressure in middle-aged men.

Children are especially vulnerable to the toxic effects of lead due to increased mouthing behavior (hands, toys, and objects soiled with lead dust or dirt) and higher absorption of ingested lead. Lead poisoning in children can impair development, and result in a lower IQ, shortened attention span, and hyperactivity. There is evidence that some effects may persist beyond childhood. The U.S. Center for

Disease Control ("CDC") considers children to have an elevated level of lead if the amount of lead in the blood is at least 10 micrograms per deciliter ("ug/dl"). Exposure to lead in fetuses is also particularly dangerous because of their sensitivity during development. Lead exposure to pregnant women may cause premature births, smaller babies, decreased mental ability in the infant, and even miscarriage.

EPA recommends a screening value of 400 mg/kg for lead in soil in residential areas. This concentration is based on the output of the model which EPA uses to evaluate the risk of lead exposure to children, called the Integrated Exposure Uptake Biokinetic Model for Lead in Children, or the IEUBK model (EPA 540-R-93-081). This model calculates the probability of children's blood lead concentrations exceeding the CDC blood lead level of concern (10 ug/dL), based on exposure to lead in soil, dust, air, drinking water, and food. The IEUBK model provides default values for air, drinking water, and food lead concentrations. Using the default values, 400 ppm soil lead is the concentration at which no greater than 5% of exposed children would have an estimated risk of exceeding 10 ug/dL blood lead. Soil lead concentrations above this value indicate the potential for sufficient concern to warrant a site-specific study of risk due to soil lead contamination.

There is evidence that several lead compounds are carcinogenic in mice or rats, causing tumors of the kidneys. Data concerning the carcinogenicity of lead in humans are inconclusive, and EPA has classified lead as a B2 (probable) human carcinogen.

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

Based on EPA's Findings of Fact set forth above, EPA's Conclusions of Law set forth in this Section V, and upon EPA's review of information set forth in the Administrative Record, EPA has determined that:

A. Exide/GBC are "persons" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

B. The substances referred to in paragraphs I, J, K, and L of Section IV of this Consent Order are solid wastes and/or hazardous wastes within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

C. Respondents have contributed to the handling, storage, treatment, and/or disposal of solid wastes and/or hazardous wastes, which may present an imminent and substantial endangerment to health or the environment.

D. The actions required by this Consent Order are necessary to protect public health or the environment.

VI. WORK TO BE PERFORMED

A. EPA acknowledges that Respondents may have completed some of the tasks required by this Consent Order and that Respondents may have available some of the information and data required by this Order. This previous work may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA.

B. Pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, Respondents agree to and are hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be developed and performed in accordance with, at a minimum: the Scope of Work for a Health and Safety Plan set forth in Attachment E; RCRA, its implementing regulations and relevant EPA guidance documents. All Attachments to this Order are incorporated into this Consent Order by reference and made a part hereof. Relevant guidance documents include, but are not limited to, the "RCRA Facility Investigation (RFI) Guidance" (Interim Final, May 1989, EPA 530/SW-88-028); "Soil Screening Guidance: User's Guide" (Second Edition, July 1996, Publication 9355.4-23); Preparation of Soil Sampling Protocols: Sampling Techniques and Strategies (EPA/600/R-92-128 1992); Soil Sampling Quality Assurance User Guide (EPA/600/8-89/046 1989); "Test Methods For Evaluating Solid Waste" (SW-846, November 1986); "OWRS Guidance for Preparation of QA Project Plans" (OWRS QA-1, May 1984); "Risk Assessment Guidance for Superfund Volume I, Human Health Evaluation Manual & Volume II, Environmental Evaluation Manual Interim Final" (EPA/540/1-89/022 and 001); Guidance Manual for the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children (February 1994) (NTIS #PB93-963510, OSWER #9285.7-15-1); and Recommendations of the Technical Review Workgroup for Lead for an Interim Approach to Assessing Risks Associated with Adult Exposures to Lead in Soil (December, 1996).

C. "Days" as used herein shall mean calendar days unless specified otherwise.

D. Interim Measures

1. Commencing on the effective date of this Consent Order and thereafter, Exide/GBC shall implement the remedial measures all of the properties identified in Exide/GBC's Interim Remedial Measures Proposal (hereafter "Exide/GBC's Proposal") in accordance with the May 22, 2000 Consent Order and Agreement, between Exide and PADEP hereafter "the PADEP Order", attached hereto as Attachment A, incorporated into this Consent Order and made a part hereof. All requirements of the PADEP Order are requirements of this Consent Order.

2. Commencing on the effective date of this Consent Order, for the properties identified in Attachment B, Exide/GBC will submit to EPA for approval a workplan that sets forth a schedule for addressing said properties consistent with the requirements within the Interim Remedial Measures Proposal referenced in Paragraph D.1 immediately above and further investigation and remediation will proceed in accordance with the EPA-approved workplan.

E. Opportunity to Revise Area of Study

1. The areas and properties within each Risk Assessment Area listed in Section IV.K, Table 1 (hereafter referred to as "Table 1"), may be revised during the implementation of this Consent Order if EPA determines there is sufficient information to apply statistical methods to determine that certain areas or properties are not likely to exceed the screening level of 400 parts per million ("ppm") lead in soil.

2. Any revision to a Risk Assessment Area proposed by Exide/GBC in accordance with paragraph E.1 immediately above must be submitted by Exide/GBC to EPA in a workplan, subject to review and approval by EPA.

3. Exide/GBC shall use EPA's approved methods and guidance to conduct any statistical analysis of soil data for purposes of revising an area or property.

F. Requirements for Investigation and Assessment using the IEUBK and EPA Adult Lead Models

1. Within sixty (60) calendar days of the effective date of this Consent Order, Exide/GBC shall submit to EPA for review and approval a workplan, including an implementation schedule, to identify the information and data, including soil data, needed to

assess the individual properties which comprise Risk Assessment Areas 3, 4, 5, 6, 7, 8, and 9 listed in Table 1 of this Consent Order, and the unremediated properties which comprise Risk Assessment Area 2 listed in Table 1 of this Consent Order (hereinafter, the "Assessment Workplan"). In the Assessment Workplan, Exide/GBC shall identify the information needed to run the IEUBK Model (Attachment C) for residential exposure scenarios, and the EPA Adult Lead Model (Attachment D) for non-residential exposure scenarios with appropriate site-specific information, and the procedures it shall use to collect that information, including but not limited to soil sampling to determine the mean lead concentration of each property.

2. If EPA approves the Assessment Workplan for site-specific inputs into the IEUBK Model, Exide/GBC shall implement the Assessment Workplan in accordance with the requirements and schedules therein.

3. In the event EPA disapproves the Assessment Workplan, it shall so notify Exide/GBC in writing. If Exide/GBC disagrees with EPA's decision, it may invoke Section XVI (Dispute Resolution) of this Consent Order.

4. In the Assessment Workplan, Exide/GBC shall evaluate Risk Assessment Areas in the following sequence: area 2 (excluding those properties addressed pursuant to Paragraphs VI.D.1 and 2), 7, 6, 9, 8, 3, 4, and 5.

5. Upon completion of collection of the data needed to run the lead uptake models with site-specific inputs, Exide/GBC shall run the models and submit a Workplan Assessment Report to EPA for review and approval in accordance with the requirements and schedule contained in the EPA-approved Workplan that includes the following:

- (a) all data collected, results from studies, conclusions and the feasibility of supporting site-specific adjustments to the lead models including data inputs to the models and the outputs,
- (b) the sampling results and analytical data used to establish the mean soil lead concentration at each property in the Risk Assessment Area. Exide/GBC shall identify any property(ies) having a mean lead concentration above the soil cleanup levels as follows:
 - (1) for residential exposure scenarios, as

determined by using the EPA IEUBK model,

- (2) for non-residential exposure scenarios, as determined by using the EPA Adult Lead Model.
- (c) the location of any properties sampled and found to have a mean lead concentration less than levels determined by the models. No further action will be required for those properties.
- (d) pursuant to Section XIV.C. below, a certification by Exide/GBC that all sampling and analyses were conducted in accordance with EPA-approved Assessment Workplan and the Quality Assurance requirements in Section VII of this Consent Order.

6. In the event EPA disapproves of the use of the site-specific input(s) to the IEUBK Model, it shall so notify Exide/GBC in writing. If Exide/GBC disagrees with EPA's decision, it may invoke Section XVI (Dispute Resolution) of the Consent Order.

G. Remediation

1. Within forty-five (45) days of receipt of EPA approval of the Workplan Assessment Report required under paragraph VI.F.5 above, Exide/GBC shall submit to EPA for approval a workplan for remediation of each of the properties (hereafter "Remediation Workplan") identified in such Report as exceeding the mean soil lead concentration derived using the appropriate exposure scenario and model.

2. Each Remediation Workplan shall include a schedule and the procedures to be followed by the Exide/GBC to attain the following cleanup levels: for residential properties, as established by EPA's IEUBK Model; for non-residential properties, as established by the EPA Adult Lead Model.

3. Upon receipt of EPA approval of the Remediation Workplans, Exide/GBC shall implement each workplan in the time and manner specified therein.

4. Exide/GBC may demonstrate that properties in any Risk Assessment Area listed in Table 1 have not been affected by smelter operations at the Facility. Prior to implementing paragraph VI.E of this Consent Order, Respondents may submit to EPA the location and description of any such area along with the

evidence and rationale that the area was not contaminated above human health criteria by smelter activities. All such submissions must be submitted to EPA for review and approval.

5. Exide/GBC shall conduct verification sampling as required in the EPA-approved Remediation Workplans to confirm that each property remediated under this Section VI.G has achieved the levels for remediation. The results of such testing shall be submitted in a report to EPA.

6. No later than implementation of the Remediation Workplans, Exide/GBC shall provide or direct residents to information relevant to screening for and abatement of lead in residential properties. To the extent practicable, EXIDE/GBC should work in conjunction with local public health agencies to make this information available.

H. Submissions/EPA Approval/Additional Work

1. EPA will review all Respondents' workplans, reports and any other documents submitted pursuant to this Consent Order ("Submissions") with the exception of progress reports, and will notify Exide/GBC in writing of EPA's approval or disapproval of each such Submission. In the event of EPA's disapproval, EPA shall specify the reasons for such disapproval, specifying in writing any deficiencies in the Submission. With the exception of the information necessary to develop inputs to the IEUBK model, such disapproval shall not be subject to the dispute resolution procedures of Section XVI, below.

2. Within thirty (30) calendar days of receipt of EPA's comments on the Submission, Exide/GBC shall submit to EPA for approval a revised Submission which responds to any comments received or corrects any deficiencies identified by EPA. Except as otherwise provided herein, in the event that EPA disapproves of the revised Submission, Exide/GBC may invoke the dispute resolution procedures of Section XVI, below. In the event EPA disapproves the revised Submission, EPA reserves the right to revise such Submission and seek to recover from Respondents the costs thereof, in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and any other applicable law. Any Submission approved or revised by EPA under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

3. Commencing within ninety (90) days of the effective date of this Consent Order and every ninety (90) days thereafter, Exide/GBC shall submit a progress report to EPA reporting the

activities performed during the previous ninety (90)-day period.

4. Two (2) copies of all Submissions required by this Consent Order shall be hand-delivered or sent by Overnight Mail to the Project Coordinator designated pursuant to Section XIII, "PROJECT COORDINATORS," below. One copy of all Submissions shall be hand-delivered or sent by Overnight Mail to the person identified by PADEP pursuant to Section XIV.A.3 of this Consent Order.

5. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigation. Within fourteen (14) calendar days after the effective date of this Order, Exide/GBC shall submit to EPA, in writing, the name, title, and qualifications of the engineer or geologist and of any contractors to be used in carrying out the terms of this Order. Exide/GBC shall notify EPA ten (10) days prior to selecting any subcontractors to be used in carrying out the terms of this Order, and shall submit to EPA in writing, the name, title, and qualifications of such subcontractors. Notwithstanding Exide/GBC's selection of an engineer, geologist, contractor or subcontractor, nothing herein shall relieve Exide/GBC of its obligation to comply with the terms and conditions of this Order. EPA shall have the right to disapprove at any time the use of any professional engineer, geologist, contractor or subcontractor selected by Respondents. EPA's disapproval shall not be subject to review under Section XVI of this Order ("DISPUTE RESOLUTION") or otherwise. Within fifteen (15) calendar days of receipt from EPA of written notice disapproving the use of any professional engineer, geologist, contractor or subcontractor, Exide/GBC shall notify EPA, in writing, of the name, title and qualifications of the personnel who will replace the personnel disapproved by EPA. Exide/GBC shall notify EPA ten (10) days prior to changing voluntarily its engineer or geologist, or contractors or subcontractors to be used in carrying out the terms of this Order, and shall submit to EPA in writing, the name, title, and qualifications of such persons(s).

6. EPA or Exide/GBC may determine that certain tasks and deliverables including, but not limited to, investigatory work or engineering evaluation require additional work. These tasks and deliverables may or may not have been in the workplans. If EPA determines that such additional work is necessary, EPA shall request, in writing, that Exide/GBC perform the additional work and shall specify the reasons for EPA's determination that additional work is necessary. Within fifteen (15) calendar days after the receipt of such request, Exide/GBC shall have the opportunity to meet or confer with EPA to discuss the additional

work EPA has requested. Any additional work proposed by Exide/GBC shall be subject to approval by EPA. In the event that Exide/GBC agrees to perform the additional work, this Order shall be modified in accordance with Section XXIII, "SUBSEQUENT MODIFICATION," below, and such work shall be performed in accordance with this Order. In the event Exide/GBC declines or fails to perform the additional work determined by EPA to be necessary, EPA reserves the right to order Respondents to perform such additional work; to perform such additional work itself and to seek to recover from Respondents any costs of performing such additional work; and to disapprove the workplans or the reports.

VII. QUALITY ASSURANCE

A. Throughout all sample collection and analysis activities, Respondents shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures, as specified in the approved Workplans. In addition, Respondents shall:

1. Ensure that the laboratories it uses for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Exide/GBC shall submit all analytical protocols to be used for analyses to EPA for approval at least thirty (30) calendar days prior to the commencement of analyses and shall obtain EPA approval prior to the use of such analytical protocols.
2. Ensure that laboratories it uses for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.
3. Inform the EPA Project Coordinator at least fourteen (14) calendar days in advance of any laboratory analysis regarding which laboratory will be used by Exide/GBC and ensure that EPA personnel and EPA authorized representatives have reasonable access to the laboratories and personnel used for analysis.

VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD

The Administrative Record supporting the issuance of this Order and any decisions or determinations made by EPA pursuant to the Order will be available for public review on Mondays through Fridays, from 9:00 a.m. to 5:00 p.m., by contacting the EPA Project Coordinator, Khai Dao, at:

U.S. Environmental Protection Agency
Region III (3WC22)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
Telephone: 215-814-5467

The index to the Administrative Record is set forth herein as Attachment G.

IX. PUBLIC COMMENT AND RELATED SUBSEQUENT MODIFICATIONS

Within thirty (30) calendar days of the date that EPA signs this Consent Order, EPA shall announce the availability of this Order to the public for review and comment and the opportunity for a public meeting in the affected area. EPA shall accept comments from the public for a period of thirty (30) calendar days after such announcement. If sufficient interest warrants, as determined by EPA, a public meeting will be held. At the end of the comment period, EPA shall review all comments received during the above-described thirty (30)-day period and/or at such public meeting, and shall either:

- A. determine that the Order should be made effective in its present form in which case EPA shall so notify Respondents in writing and send Respondents a copy of this Order executed by EPA. The Consent Order shall become effective on the date of the receipt of such notice and a true and correct copy of the Consent Order as provided in Section XXVII herein; or
- B. determine that modification of the Consent Order is necessary, in which case EPA shall notify Respondents in writing as to the nature of all required changes. If Respondents agree to the modifications, the Consent Order shall be so modified and shall become effective upon the receipt by Respondents of an executed a true and correct copy of the modified Consent Order as provided in Section XXVII herein.

In the event that the parties are unable to agree on

modifications required by EPA as a result of public comment, this Order shall be withdrawn by EPA. In such an event, EPA reserves the right to take such action as may be necessary to protect public health and the environment, including but not limited to, issuance of a subsequent order or initiation of a civil action to Respondents or any other person in connection with the Facility under Section 7003 of RCRA.

X. SITE ACCESS

A. To the extent that work required by this Consent Order, or by any EPA-approved Workplan prepared pursuant hereto, must be done on property not owned or controlled by Respondents, Respondents shall use their best efforts to obtain site access agreement(s) from the present owner(s) or lessee(s) of such property, as appropriate, within thirty (30) calendar days of receipt of EPA approval of any Workplan pursuant to this Order which requires work on such property. For the purposes of this paragraph, "best efforts" shall include, at a minimum, but shall not be limited to: a) a certified letter from Exide/GBC to the present owner(s) or lessee(s) of such property requesting agreements to permit Exide/GBC, EPA, and its authorized representatives access to such property; and b) the payment of reasonable sums of money in consideration of access. "Reasonable sums of money" means the fair market value of the right of access necessary to implement the requirements of this Consent Order. In the event that such agreements for access are not obtained within thirty (30) calendar days after receipt of EPA approval of any Workplan pursuant to this Consent Order which requires work on property which is not owned or controlled by Respondents, Respondents shall notify EPA, in writing, within seven (7) calendar days after the conclusion of such thirty day period, regarding both the efforts undertaken to obtain access and the inability to obtain such agreements. In the event that Respondents fail to obtain off-site access, despite the exercise of best efforts, EPA, in its sole discretion, not subject to the Dispute Resolution provisions contained in Section XVI of this Consent Order, may assist Respondents in obtaining off-site access for Respondents. Respondents shall reimburse EPA for all costs incurred by EPA in obtaining access, including, but not limited to, attorneys fees and the amount of any just compensation and costs incurred by EPA.

B. Nothing in this Consent Order limits or otherwise affects EPA's rights of access and entry pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Exide/GBC shall submit to EPA the results of all sampling or tests or other data generated by, or on behalf of, Exide/GBC in accordance with the requirements of this Order and the Attachments appended hereto and incorporated herein.

B. Exide/GBC shall notify EPA, in writing, at least fourteen (14) calendar days in advance of any field activities, such as well drilling, installation of equipment, or sampling. At the request of EPA, Exide/GBC shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Exide/GBC pursuant to this Order. Nothing in this Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

XII. RECORD PRESERVATION

Respondents agree that they shall preserve, during the pendency of this Order and for a minimum of at least six (6) years after its termination, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Order or to hazardous waste management or disposal at the Facility. After six (6) years, Respondents shall make such records available to EPA for inspection or shall provide copies of such records to EPA. Respondents shall notify EPA at least thirty (30) calendar days prior to the proposed destruction of any such records, and shall provide EPA with a reasonable opportunity to inspect, copy or take possession of any such records. Respondents shall not destroy any record to which EPA has requested access for inspection or copying until EPA has obtained such access or withdrawn its request for such access. Nothing in this Section XII shall in any way limit the authority of EPA under Section 3007 of RCRA, 42 U.S.C. Section 6927, or any other access or information-gathering authority.

XIII. PROJECT COORDINATORS

A. EPA hereby designates Khai Dao as the EPA Project Coordinator. Within ten (10) calendar days of the effective date of this Order, Exide/GBC shall notify EPA, in writing, of the Project Coordinator it has selected. Exide/GBC's legal counsel shall not serve as Respondents' Project Coordinator. Each

Project Coordinator shall be responsible for overseeing the implementation of the Order. The EPA Project Coordinator will be EPA's primary designated representative at the Facility. To the maximum extent possible, all communications between Respondents and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Coordinators.

B. Each party agrees to provide at least seven (7) calendar days written notice to the other party prior to changing Project Coordinators.

C. If EPA determines that conditions or activities at the Facility, whether or not in compliance with this Order, have caused or may cause a release or threatened release of hazardous wastes, solid wastes, hazardous constituents, hazardous substances, pollutants or contaminants which threaten or may pose a threat to the public health or welfare or to the environment, EPA may direct that Exide/GBC stop further implementation of this Order for such period of time as may be needed to abate any such release or threatened release and/or request that Exide/GBC undertake pursuant to this Order any action which EPA determines is necessary to abate such release or threatened release.

D. The absence of the EPA Project Coordinator from the Facility shall not be cause for the delay or stoppage of work.

XIV. NOTIFICATION

A. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

1. Four copies of all documents to be submitted to the EPA shall be sent to:

Mr. Khai Dao (3WC22)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2. Documents to be submitted to Exide/GBC shall be sent to:

Mr. Neal Lebo

Exide Corporation
P.O. Box 14205
Reading, PA 19601

3. One copy of all documents to be submitted to EPA shall also be sent to:

Mr. James Flesher, Program Manager
Environmental Cleanup Program
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, Pennsylvania 17110-8200

B. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to this Consent Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Exide/GBC's compliance or noncompliance with any requirement of this Consent Order shall be certified by a responsible corporate officer or a duly authorized representative of a responsible corporate officer. A "responsible corporate officer" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a "duly authorized representative" only if: (1) the authorization is made in writing by a person described above; (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the Project Coordinator designated by EPA Section XII ("Project Coordinator") of this Order.

C. The certification required by paragraph B, above, shall be in the following form:

I certify under penalty of law that this **[type of submission]** and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the

person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature : _____

Name : _____

Title : _____

XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

A. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XVII, "FORCE MAJEURE AND EXCUSABLE DELAY," in the event that Respondents fail to comply with any requirement set forth in this Consent Order, Respondents shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA. Compliance by Respondents shall include commencement or completion, as appropriate, of any activity, plan, study or report required by this Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

1. For failure to commence, perform or complete work as prescribed in this Consent Order: \$2,000 per day for one to seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter;
2. For failure to submit any draft or final workplans, plans, or reports as required by this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter;
3. For failure to submit progress reports as required by Paragraph VI.H.3 of this Consent Order: \$750

per day for one to seven days or part thereof of noncompliance, and \$1,000 per day for each day of noncompliance, or part thereof, thereafter;

4. For failure to submit other deliverables as required by this Consent Order: \$750 per day for one to seven days or part thereof of noncompliance, and \$2,000 per day for each day of noncompliance, or part thereof, thereafter;
5. For any failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$4,000 per day for each day of noncompliance, or part thereof, thereafter, in addition to any stipulated penalties imposed for the underlying noncompliance;
6. For any failure to comply with this Consent Order not described in subparagraphs 1 through 5, above: \$750 per day for one to seven days or part thereof of noncompliance, and \$1,000 per day for each day of noncompliance, or part thereof, thereafter.

B. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

C. All penalties owed to EPA under this Section XV shall be due within thirty (30) calendar days of receipt of a demand for payment unless Exide/GBC invokes the dispute resolution procedures under Section XVI, below. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) calendar day period and shall accrue at the United States Tax and Loan Rate.

D. All penalty payments shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III
P.O. Box 360515

Pittsburgh, Pennsylvania 15251-6515

All payments shall reference the name of the Facility, Respondents' name and address, and the EPA Docket Number of this Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Respondents may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Order by invoking the dispute resolution procedures below under Section XVI, "DISPUTE RESOLUTION." Stipulated penalties shall continue to accrue, but need not be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondents do not prevail upon resolution of the dispute, Respondents shall remit to EPA within seven (7) calendar days of receipt of such resolution any outstanding penalty payment, including any accrued interest, in the manner described above in Paragraph D of this Section XV. To the extent Respondents prevail upon resolution of the dispute, no penalties shall be payable.

F. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondents' obligation to comply with the requirements of this Consent Order.

G. The stipulated penalties set forth in this Section XV shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the requirements of this Consent Order. In the event statutory penalties are imposed for violations for which Respondents are concurrently liable for stipulated penalties pursuant to this Section XV, Respondents shall be entitled to an offset by EPA to the total amount of statutory penalties imposed by the court by the total amount of stipulated penalties previously paid for such violations.

XVI. DISPUTE RESOLUTION

A. If Exide/GBC disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Exide/GBC shall invoke the informal dispute resolution provision of this Paragraph XVI.A by notifying EPA in writing of its objections ("Notification of Objection"), and the basis therefor, within fourteen (14) calendar days of receipt of EPA's disapproval, modification, decision or

directive. Such Notification of Objection shall set forth the specific points of the dispute, the position which Exide/GBC asserts should be adopted as consistent with the requirements of this Order, the basis for Exide/GBC's position, and any matters which it considers necessary for EPA's determination. EPA and Exide/GBC shall have fourteen (14) calendar days from the receipt by EPA of the Notification of Objection, during which time representatives of EPA and Exide/GBC may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within this fourteen (14) calendar day period, EPA will furnish to Exide/GBC, in writing, its decision on the pending dispute ("EPA's Decision").

B. In the event that the parties cannot resolve a dispute under the informal procedures set forth in the preceding Paragraph XVI.A, within fourteen (14) calendar days after its receipt of EPA's Decision as set forth in Paragraph XVI.A above, Exide/GBC must submit to EPA a written statement of its position ("Statement of Position") on the matter in dispute, including but not limited to, any factual data analysis or opinion supporting that position and any supporting documentation relied upon by Exide/GBC. Within fourteen (14) calendar days after receipt of Exide/GBC's Statement of Position, EPA will serve upon Exide/GBC its Statement of Position. If the Parties are unable to reach an agreement after an additional ten (10) calendar days, the dispute will be referred to the Director of the Waste and Chemicals Management Division, EPA Region III, who will issue a decision resolving the dispute based upon the entire administrative record, including Exide/GBC and EPA's Statements of Position.

C. Except as provided in paragraphs XV.C and XV.E "DELAY in PERFORMANCE/STIPULATED PENALTIES," the existence of a dispute, as defined in this Section XVI, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

D. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, without limitation, decisions of the Director of the Waste and Chemicals Management Division, Region III, pursuant to this Order, shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel Respondents' compliance with this Consent Order.

E. In the event the Director of the Waste and Chemicals

Management Division renders a decision favorable to EPA on the workplan or the inputs to the IEUBK Model, Exide/GBC must run the IEUBK Model with the default input(s), in accordance with paragraph VI.F.2 herein.

XVII. FORCE MAJEURE AND EXCUSABLE DELAY

A. Exide/GBC shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Exide/GBC shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Exide/GBC, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Order. Such events do not include increased costs of performance, changed economic circumstances, or failure to obtain federal, state, or local permits unless Exide/GBC has made timely and complete application(s) therefor and has exercised reasonable care to obtain such permit(s).

B. Exide/GBC shall notify EPA, in writing, within seven (7) calendar days after it becomes or should have become aware of any event which Exide/GBC claims constitutes a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this Section XVII shall constitute a waiver of Exide/GBC's right to assert a force majeure claim with respect to such event. In addition to the above notification requirements, Exide/GBC shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

C. If EPA determines that the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement of this Order may be extended, upon EPA approval, for a period equal to the delay resulting from such force majeure. This shall be accomplished through an amendment to this Order pursuant to Section XXIII, "SUBSEQUENT MODIFICATION." Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Order, unless these tasks are also specifically altered by amendment of the Order.

XVIII. RESERVATION OF RIGHTS

A. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Exide/GBC pursuant to this Consent Order, to require that Exide/GBC correct or reperform any work disapproved by EPA, and to request that Exide/GBC perform tasks in addition to those stated in the Scope(s) of Work, Workplans, or this Consent Order.

B. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Exide/GBC's failure to comply with any of the requirements of this Consent Order, including, without limitation, the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. Section 6973. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority.

C. Compliance by Exide/GBC with the terms of this Consent Order shall not relieve Exide/GBC of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

D. The signing of this Consent Order and Exide/GBC's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, or any other authority, should EPA determine that such action is warranted.

E. This Consent Order is not intended to be, nor shall it be construed as, a permit. This Order does not relieve Exide/GBC of any obligation to obtain and comply with any local, state, or federal permit or approval.

F. EPA reserves the right to perform any portion of the work required to be performed herein or any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondents for costs incurred by the United States in connection with any such response actions to which EPA may be entitled to as a matter of law. Notwithstanding compliance with the terms of this Consent Order, Respondents are not released from liability, if any, for the costs of any response

actions taken by EPA.

G. EPA reserves whatever rights it may have under CERCLA or any other law, or in equity, to recover from Respondents any costs incurred by EPA in overseeing the implementation of this Consent Order.

XIX. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or other entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondents shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondents or their agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondents or the United States under their various contracts. The United States shall not be deemed to be a party to any contract entered into by Respondents for the purpose of carrying out any activities required by this Consent Order.

XXII. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving

Respondents and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Exide/GBC, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXIII. SUBSEQUENT MODIFICATION

A. Except as provided in Paragraph C of this Section XXIII, below, this Consent Order may be amended only by mutual agreement of EPA and Exide/GBC. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Order. Any oral agreement between EPA and Exide/GBC, the purpose of which is to modify this Order to address exigent circumstances, and which is subsequently ratified in writing by EPA and Exide/GBC, shall have as its effective date the date of such oral agreement.

B. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Consent Order and shall subject Exide/GBC to the stipulated penalty provisions included in Section XV, "DELAY IN PERFORMANCE/STIPULATED PENALTIES."

C. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.

D. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Exide/GBC shall be construed as relieving Exide/GBC of its obligation to obtain written approval, if and when required by this Consent Order.

XXIV. SEVERABILITY

If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is held by any judicial or administrative authority to be invalid,

the application of such provision to other parties or circumstances and the remainder of this Consent Order shall not be affected thereby and shall remain in full force.

XXV. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Exide/GBC's receipt of written notice from EPA that Exide/GBC has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Exide/GBC's obligation to comply with any continuing obligations hereunder including, but not limited to, Sections XII ("RECORD PRESERVATION"), XVIII ("RESERVATION OF RIGHTS"), XIX ("OTHER CLAIMS"), XX ("OTHER APPLICABLE LAWS"), and XXI ("INDEMNIFICATION OF THE UNITED STATES GOVERNMENT").

Respondents may request a termination letter when Respondents believe they have made the necessary demonstration under this provision, and EPA agrees to consider and act upon such requests as soon as practicable.

XXVI. ATTORNEYS' FEES

The Respondents shall bear their own costs and attorneys' fees.

XXVII. EFFECTIVE DATE

The effective date of this Consent Order shall be the date on which Exide/GBC receives a true and correct copy of the fully executed Consent Order as provided in Section IX, Paragraph A or a true and correct copy of the fully executed modified Consent Order as provided in Section IX Paragraph B.

IT IS SO AGREED AND ORDERED:

DATE: _____ BY: _____

BRADLEY M. CAMPBELL
REGIONAL ADMINISTRATOR
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

DATE: _____ BY: _____

(NAME)
(TITLE)
EXIDE

DATE: _____ BY: _____

(NAME)
(TITLE)
GENERAL BATTERY CORPORATION